

**SECURITIES AND EXCHANGE COMMISSION**  
**Attorneys for Plaintiff**  
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**New York, New York 10281**  
**(212) 336-1100**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,

**Plaintiff,**

**-against-**

**ABRAXAS J. DISCALA,  
MARC E. WEXLER,  
MATTHEW A. BELL,  
CRAIG L. JOSEPHBERG, and  
IRA SHAPIRO,**

**Defendants.**

14 CIV. 4346 (ENV) (RML)

ECF CASE

**DECLARATION OF SHELDON L. POLLOCK IN SUPPORT OF  
PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S  
MOTION TO AMEND THE COMPLAINT**

I, Sheldon L. Pollock, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am over 18 years of age and am employed as an Assistant Regional Director in the Enforcement Division of the New York Regional Office of the Securities and Exchange Commission (“Commission”). I submit this Declaration in support of the Commission’s Motion to Amend the Complaint.

2. I submit this Declaration based upon personal knowledge, information and belief.

3. Attached hereto as Exhibit A is a true and correct copy of the Commission’s proposed First Amended Complaint. The First Amended Complaint is identical to the proposed complaint attached to the Commission’s November 4, 2015 letter to the Court, DE 26, but for one change to correct proposed new defendant Darren L. Ofsink’s current age.

4. Attached hereto as Exhibit B is a true and correct copy of a “redline” comparison of the First Amended Complaint and the initial complaint filed in this action.

5. The Commission filed its initial complaint in this action on July 17, 2014.

6. Since the Court entered its November 21, 2014 Order staying discovery in the Commission’s Civil Case, the Commission has not sought or taken any discovery in the Civil Case from any Existing Defendant or third party.

7. The Commission issued an Order Directing Private Investigation and Designating Officers to Take Testimony in the Matter of CodeSmart Holdings, Inc., NY-8956 (“Formal Order”) on August 19, 2013.<sup>1</sup>

8. The Commission’s investigation into matters described in the Formal Order continued after the Commission filed its July 17, 2014 complaint against defendants in this

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<sup>1</sup> Commission formal orders are non-public documents. The Commission has not included copies of the Formal Order with this memorandum and respectfully requests that the Court conduct an *in camera* review if the Court wishes to examine it.

action. This investigation included inquiries—both voluntary and through administrative subpoenas—concerning potential wrongdoing by the “Proposed New Defendants” against whom the Commission seeks to add claims in the First Amended Complaint.

9. The Commission’s investigation also included conversations with several existing defendants in this action. None of those defendants questioned, or registered any objection to, the Commission staff proceeding with its investigation.

10. Attached hereto as Exhibit C is a true and correct copy of the press release issued by the Commission on July 17, 2014 upon the filing of the complaint in this case.

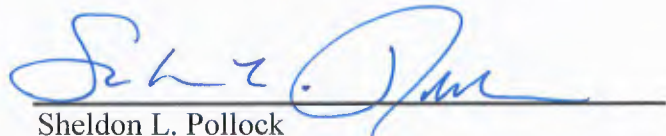
11. Attached hereto as Exhibit D is a true and correct copy of relevant pages of the Commission’s June 4, 2015 Enforcement Manual, an entire copy of which can be found at <http://www.sec.gov/divisions/enforce/enforcementmanual.pdf>.

12. Attached hereto as Exhibit E is a true and correct copy of a November 6, 2015 letter from David Gourevitch, Esq., counsel to Defendant Ira Shapiro, to Michael D. Birnbaum, Senior Trial Counsel at the Commission.

13. Attached hereto as Exhibit F is a true and correct copy of the transcript for the November 20, 2015 hearing in *United States v. Discala, et al.*, 14-CR-00399 (ENV).

I declare under penalty of perjury that the foregoing is true and correct.

Executed: November 30, 2015  
New York, New York

  
Sheldon L. Pollock